

Remarks/Arguments

Please reconsider the application in view of the above amendments and the following remarks.

Status of Claims

Claims 25 and 28-30 are rejected. Claims 25 and 30 have been amended. New claims 33- 46 have been added.

Amendments

The specification has been amended by adding paragraph nos. 0027.1 and 0027.2 and a portion of paragraph 0030. This section of the Detailed Description was inadvertently missing when this divisional application was filed. Applicant submits that this section was included in the parent application (now U.S. Patent No. 6,619,961), which is incorporated herein by reference. The specification has also been amended to update the applications referenced in paragraph nos. 0001, 0034 and 0046.

Information Disclosure Statement

The Office action states that the Information Disclosure Statement filed September 15, 2003 fails to comply with 37 CFR 1.98(a)(2) because copies of the cited references are not provided. Applicant respectfully points out that 37 CFR 1.98(d) does not require the submission of cited references if the cited references were previously submitted and properly cited in an earlier application and that earlier application is identified in the Information Disclosure Statement filed September 15, 2003 and is relied on for an earlier effective filing date under 35 U.S.C. 120. Accordingly, applicant respectfully requests that the IDS be considered pursuant to 37 CFR 1.98(d).

Rejections under 35 U.S.C. §101

The Office action rejects claims 25 and 28-30 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In particular, the Office action states that

the claimed invention is non-statutory because it is not within the technological arts. Applicant respectfully traverses this rejection.

In Ex parte Lundgren, Appeal No. 2003-2088, the Board of Patent Appeals and Interferences (BPAI) recently held that “there is currently no judicially recognized separate ‘technological arts’ test to determine patent eligible subject matter under Sec. 101.” Lundgren, at 9. The Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility specifically identifies the “not in the technological arts” test as an improper test for subject matter eligibility. See 1300 OG 142.

Thus, applicant submits that the claimed invention cannot be found non-statutory based on not being within the technological arts. Accordingly, applicant requests that the rejection under 35 U.S.C. 101 be withdrawn.

Rejections under 35 U.S.C. §102

Claims 25 and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,720,502. Applicant respectfully traverses.

Independent claim 25 has been amended to recite “receiving a user input associated with a pattern of contiguous locations of at least one sensory symptom in said body” and “displaying location representations at said locations....wherein a region on said body representation is filled in with said location representations to represent said pattern of locations where said sensory symptom is experienced.”

Cain describes a pain location and intensity communication apparatus and method. According to Cain, silhouettes of a patient are displayed with a series of icons illustrating patient conditions (see Abstract, FIG. 1). The icons may be placed on the silhouettes in particular locations to indicate pain location (see col. 3, lines 45-47). Because the icons disclosed in Cain appear to be located one at a time, a user input appears to be associated with only one general location as opposed to a pattern of contiguous locations. In contrast with the claimed invention, therefore, Cain does not disclose “receiving a user input associated with a pattern of contiguous locations of at least one sensory system” and does not disclose “displaying location representations...wherein a region on said body representation is filled in with said location

representations to represent said pattern of contiguous locations where said sensory symptom is experienced.”

For these reasons, applicant submits that Cain does not identically disclose each and every element and limitation of the independent claim 25. Accordingly, applicant requests that the rejection of independent claim 25, and all claims dependent therefrom, be withdrawn.

Applicant further submits that Cain does not disclose “comparing said final judgment representation to a library of data to determine a diagnosis,” as recited in dependent claim 30. Cain merely describes a pain intensity time chart that allows pain intensity to be updated periodically. Although such a chart allows pain intensity for a patient to be compared to pain intensity for that patient at a previous point in time, Cain fails to disclose a comparison to “data previously recorded for other patients,” as recited in amended claim 30. For this reason, applicant submits that claim 30 is separately patentable.

Applicant further submits that Cain does not identically disclose the features recited in new claims 33-48 for the same reasons discussed above. Moreover, Cain does not disclose “a user input received by continuously activating a user input device for a period of time while indicating said contiguous locations on said display,” as recited in dependent claims 33 and 43. Cain also does not disclose “a user input generated by holding down a button on a mouse while moving a cursor controlled by said mouse over said locations on said display, and wherein said location representations are displayed at locations of said cursor on said display as said user input is received,” as recited in dependent claim 34 and 44. In contrast, the Cain merely discloses moving individual icons one at a time to individual locations. Cain also does not disclose “erasing at least one of said location representations in response to said user input such that a pattern of contiguous locations is modified,” as recited in dependent claims 37-38 and 45-46.

Conclusion

The claims have been shown to be allowable over the prior art. Applicant believes that this paper is responsive to each and every ground of rejection cited by the Examiner in the Action dated November 8, 2005, and respectfully requests favorable action in this application.

Appl. No. 10/662,568
Amendment dated February 2, 2006
Reply to Office action of November 8, 2005

The examiner is invited to telephone the undersigned, applicant's attorney of record, to facilitate advancement of the present application.

Please apply any charges not covered, or any credits, to Deposit Account 50-2121
(Reference Number PSA002DIV).

Respectfully submitted,

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